MEMORANDUM

EXHIBIT "A"

TO: CRB Executive Committee

DATE: December 1, 1976

SUBJECT: December Forum Agenda And Brief

FROM: Rev. Irvin Elligan, Jr.
Forum Chairperson

Is the Grand Jury composition an unfair representation of the community?

BACKGROUND

The Community Relations Board has received as a Burning Issue, at its September Forum, the claim that there is no Black, Latin, or poor representation on the Grand Jury.

Investigation: Investigation and research has shown that it appears that the selection process in obtaining Grand Jury members does not cause the Grand Jury to necessarily reflect the identifiable groups of the community, particularly Blacks, Latins, the poor and the young.

City of Miami: The City of Miami, in November, adopted a resolution..."urging the Grand Jury Commission of Metropolitan Dade County to exercise scrutiny in their preparation of the list of jurors to serve as grand jurors and thereby demonstrate that the part of the judicial system referred to as the Grand Jury and the guardian of the police power of the state is a system and means whereby all of the people of Dade County can participate directly in the administration of their government."

The Need: The concern of whether the Grand Jury composition is an unfair representation of the community is not limited to the need for the function of the Grand Jury to investigate crimes but also extends to the need for the watchdog function of the Grand Jury to investigate and make recommendations regarding operations of government.

The Questions: The questions, thus, are: Should Dade County grand jurors reflect necessarily the identifiable groups of Dade County, or, would the implementation of such a require-

-11-

sent be a form of reverse discrimination? Should there be another selection process done on a random basis such as compiling a list from voters registration list, or would such a provision be counter-effective in obtaining qualified "blue ribbon" grand jurors who can handle complex questions?

STATEMENT OF OBJECTIVES

Scope: The CRB Forum Division proposes at the December Forum to bring to the community this issue with the objective to discuss what ways could be obtained to assist the Grand Jury commissioners, presently comprised of the fifty-one circuit court judges, to prepare a list of jurors that would be fairly representative of the total community, to discuss whether or not the present composition of the Grand Jury and the way it is selected is in fact fairly representative of the total true interests and needs of justice of all the people in Dade County, and, to discuss whether it is feasible to adopt alternative selection processes.

Invitees: Accordingly, the Forum Division, for assistance in meeting these objectives, is inviting Attorney Joel Hirschhorn, the attorney representing clients attacking the Grand Jury selection process, and, Representative Alan Becker, who sponsored in the past legislative session, a bill that the voters registration list be the basis for selecting grand jurors, as speakers.

MEMORANDUM

Exhibit "B"

TO: Rev. Irvin Elligan, Jr.

DATE: December 10, 1976

SUBJECT: December Forum Minutes

FROM: Mr. John D. Due,
Program Officer, and
Mr. Doran Cooper
Administrative Officer

CRIMINAL JUSTICE: IS THE GRAND JURY COMPOSITION AN UNFAIR REPRESENTATION OF THE COMMUNITY?

Attorney Joel Hirschhorn: The Grand Jury system in Florida is statutory with the Dade County Grand Jury selection process based upon a special statute. Here, a master list of 500 names is developed by Dade Circuit judges who each submit ten names to compile a list for "blue ribbon" Grand Jury. U.S. District Court Judge Dyer has ruled that no identifiable group shall be discriminated against. This includes identifiable groups here in Dade County such as Blacks, the Latins, and the poor. But Judge Dyer also says that jury discrimination is not easy to prove. Mr. Hirschhorn says that the method by which Grand Jury is selected is what the issue is, not the result. The evil is with the pools of names provided by the master list. The solution here is with proper legislation and not with the courts. Usually the most prominent names appear on the Grand Jury, the prevalent logic being that what is needed is "intelligent, educated people." If the investigation to obtain facts for a Grand Jury is a quality investigation by staff, then the average person can come to reasonable conclusions and serve as well as any Grand Jury member. For example, the Watergate Grand Jury that involved the President of the United States, President Nixon, was achieved by Grand Jury members, composed of ordinary average persons. Thus, the problem is with the process of selection.

Auditor--Mr. Richard P. Brinker: For clarification, the Grand Jury members are required to be registered voters and citizens of these United States. From his observation, there is in general, a representative sampling of minority groups on the Florida Grand Jury. The sum total of the list

-14-

comes from the judges. Under a new statute that has been passed, the chief judge may select from a computerized program which has been declared valid and represents a cross section of the community according to sex, race, etc.

Representative Alan Becker: The recent Miami Herald stories state that Circuit Court judges seek to ensure the so-called 'blue ribbon' Grand Jury. Usually, only names of friends, of acquaintances, former campaign workers of the judges, comprise the list of ten names from each judge. He further believes that there is economic discrimination more than anything else against the poor. Consequently, this is why he introduced last year a selection process based upon neutral selection from the voters' registration list, which did pass the House of Representatives of the Florida Legislature and which he has again re-filed last week, this same bill.

Auditor-State Attorney Richard Gerstein: He feels random selection process of the Grand Jury members based upon the voters' registration list would be a mistake. But he would be able to live with it. He says that many grand jurors are not necessarily Circuit Court judges friends. Many do not know who recommended them. He says that the previous system, a voluntary grand jury system, was changed in 1967. Our present system began in 1970 and with this system, the jurors are usually more community involved, intelligent, etc. The pay of $10.00 a day to serve as a juror is too small an amount for poor people who would have to serve for several days as jury members. Before there is a change, more compensation should be available for those jurors who are poor and otherwise cannot afford to participate. In the past Grand Juries there have been minority members serving, including Spanish-speaking members. If a random selective process system is adopted, the quality of jurors will decrease.

Question by Mrs. Frances Thomas: Retire withdrawal grand jurors.

December Forum Minutes
December 10, 1976

Reply by State Attorney Gerstein: A high-quality grand juror will that person with the high sense of dedication to administration of the law, belief in justice, high degree of integrity, etc. Occupation, race, and income would not be the issue.

Response by Mrs. Frances Thomas: This may be your definition, but may not be the definition required of the judges.

Attorney Klugherz's response: No one has ever seen the master pool list of 800 names. He has conducted surveys here in Dade County and it looks like "who is who in Dade County."

Response by State Attorney Richard Gerstein: One should invite Mr. Ben C. Criswell, President of the Dade County Grand Jury Association, and should have invited Judges Vann and Crawford to relate to this issue.

Moderator's Summation: The Forum Division shall invite Mr. Ben Criswell, at his request, for the next Forum and for said occasion shall also invite Judges Vann and Crawford.

Adjournment.

MEMORANDUM

Exhibit "C"

TO: CRB Board Council

DATE: December 16, 1976

SUBJECT: December Forum Division Report

FROM: Rev. Irvin Elligan, Jr.
Forum Chairperson

Is the Grand Jury composition an unfair representation of the community?

A. The issue presented

1. Determination of charge to the speakers: Given that the present selection process does not necessarily result in a Grand Jury composition that is comprised of Blacks, Latins, and the poor, what is the wrong?

2. The argument affirming there is a wrong: What is the wrong is the selection process. The judges choose their friends or members of their class for their Grand Jury pool, thereby producing White, middle, and upper class grand jurors, who are unlikely to investigate office holders and business executives they know, or have no notice of feel a need to investigate the administration of government serving Latins, Blacks or the poor.

Thus, the selection process discriminates economically against Latins, Blacks or the poor. The solution is a random and neutral selection process from the voters registration list.

3. The argument denying there is a wrong: The selection process has resulted over a period of time in the production of grand juries comprised of a representative sampling of Blacks and Latins, and also results in quality grand juries; namely, composed of persons with a high degree of involvement, intelligence, integrity, and belief in justice

Occupation, race, and income are not the issue in establishing a high-quality Grand Jury.

A random selection process will result in a decrease in quality of grand jurors and will not achieve participation of the poor who cannot afford to participate.

B. FOR FINDINGS

1. Statement of the problem:

1.1 Analysis of the arguments and research shows that the problem is not the need to have Blacks, Latins, and the poor to serve on grand juries as an end in itself.

1.2 Rather, the problem is that the way this selection process is designed and/or implemented, the selection process is not achieving as an end quality grand juries; namely, those grand juries who are representative of the interests of all of the people of the community, specifically, in relation to its watchdog of government function.

2. Rationale for the findings:

2.1 There is a perception of a sense of alienation from the Grand Jury system by Black, Latin, and poor groups. See "The Civil Petitioner's Right to Representative Grand Juries and a Statistical Method of Showing Discrimination in Jury Selection Cases Generally," U.C.L.A. Law Review, Vol. 20, 1972-1973, Pages 681- citing cases and articles.

The rationale from the above article as would be applied to Dade County would mean: (1) Dade County grand juries perform well relating to the effects of problems they choose to select to review as impacting upon them as members of a class, but do not relate well to the causes of the same problems that impact upon members outside of their class; (2) Dade County grand juries have not performed

well to serve all of the people because they tend to choose to review problems that reflect the familiar needs and interests of the grand juries as members of a class, but not the needs and interests of members outside of their class that they are not familiar with; (3) thus, the failure to produce quality grand juries is caused by the way the selection process is being implemented that produces a specific class of grand jurors.

See Also the Final Reports of the Grand Jury for the 1975 Fall Term and 1976 Spring Term for the description of the problems they reviewed.

2.2 The paramount function of the Grand Jury includes the duty to investigate..."wherever county affairs are being conducted according to law and good morals ...to investigate whether such officials are incompetent or lax in the performance of duties, ...whether they are lacking in the common integrity attached to the duty." Ovens vs. State, 1952, Fla., 59 So 2d 784.

Therefore, to serve all of the people of the county, a quality Grand Jury would be that Grand Jury that represents "...divergent viewpoints held by various political, economic, racial, religious, and social classes within the county." See "The Grand Jury: Vestiges of Aristocracy," Marsh. Pac. Law Review, Vol. 26, Page 49 (1970).

3. A PROPOSED PLAN OF ACTION STRATEGY TO MEET OBJECTIVE TWO

The objective: To identify whether Judge Harold Vann, Presiding Judge of the Grand Jury, and representing the feelings of the other judges, would have an interest in the selection process (1) to maintain it as it is, (2) to reform the process, or (3) whether to recommend the change of the system.

The Forum Division Chairman recommends to invite Judge Harold Vann and Mr. Ben Criswell, of Dade County Grand Jury Association, because of the unusual community interest and because of the Chairman's promise at the Forum.

-15-

MEMORANDUM

ATTACHMENT "D"

TO: CRB Board Council

DATE: January 4, 1977

SUBJECT: January Forum Agenda And Brief

FROM: Rev. Irvin Elligan, Jr.
Forum Chairperson

THE SELECTION PROCESS FOR THE GRAND JURY: DADE CO

For this subject, the speakers shall be the Presiding Judge of the Dade County Grand Jury, Hon. Harold Wann, and the President of the Grand Jury Association of Florida, Inc., Mr. Ben H. Caldwell.

A. BACKGROUND

This subject is a continuation of the December Forum. The CRB Board Council received a Forum Report at its December meeting proposing findings and recommendations.

The CRB Board Council did not determine the question regarding the selection process for the Grand Jury.

The question before the CRB Board Council was whether the selection process was achieving, as an end, quality grand juries; namely, those grand juries who are representative of the interests of all the people of the community, specifically, in relation to its watchdog of government function.

The Forum Report stated that the perception is that the selection process tends to produce White, middle and upper class grand juries who tend to review problems that reflect the familiar needs and interests of members of their class, but tend not to review the needs and interests of members outside of their class that they are not familiar with.

Thus, it was determined by the CRB Board Council to seek to hear the concerns of the Presiding Judge of the Dade County Grand Jury and the proposal of the Grand Jury Association of Florida, Inc., at the January Forum, regarding the selection process.

-20-

a. STATEMENT OF OBJECTIVES

One objective of the Forum shall be to seek from the Presiding Judge of the Grand Jury the interest he may have regarding whether there is a need of assistance in reforming the selection process, or whether there is a need to change the system.

Further, it shall be an objective of the Forum to review the initial proposal by the Grand Jury Association of Florida, and to compare it with the proposal by Representative Alan Becker that was presented at the December Forum.

1. The present system. Under the present system, each of the fifty circuit court judges, sitting as Grand Jury commissioners, nominate ten persons to form a prospective Grand Jury pool of five-hundred names. Then the judges, sitting as Grand Jury commissioners, after screening, choose a venire of ninety persons from this pool (group of persons to be called to serve on the Grand Jury). On the date that they are summoned, the ninety names are put in a drumbowl and the Presiding Judge will draw twenty-three names for the Grand Jury panel.

2. Proposal by Representative Alan Becker. Under the proposal to amend Chapter 40, Florida Statutes, introduced last year in the Florida Legislature by Representative Alan Becker, the function of the circuit court judges sitting as Grand Jury commissioners would be authorized to be eliminated.

In his proposal, the initial pool of grand jurors, the venire, and the Grand Jury panel, would result from a computerized random selection process originating from the county voters registration list and would be administered by an administrative clerk.

This selection process would be similar to the way in which federal grand jurors are selected.

3. Proposal by the Grand Jury Association of Florida, Inc.

Under the proposal by the Grand Jury Association of Florida, Inc., the initial pool of grand jurors would originate from the voters registration list by random selection. However, the screening function of the circuit court judges as jury commissioners would be maintained.

Under this proposal, the judges, as jury commissioners, would select randomly from the Grand Jury pool a tentative venire and discuss the qualifications of the persons, would inquire from any state and local government agency for relevant information, and review responses of questionnaires sent to persons on the tentative venire.

Any Grand Jury commissioner, by a veto, may eliminate any name from the tentative venire list.

(See Sections 14, 15, 16 and 22 for the specific grounds potential grand jurors would be "selected out" as set forth in the proposal by the Grand Jury Association of Florida included in the addendum to this brief, namely, pages 16, 17, 18, 19 and 20 of their proposal).

[illegible]

Excerpt from the proposal by the Grand Jury Association of Florida to revise Chapter 905, Florida Statutes, that would eliminate from Chapter 40 references to the Grand Jury.

[illegible] 14. Duties of grand jury commission.—

(1) From the petit jury pool the grand jury commission shall randomly select, or cause to be randomly selected, from 50 to 100 names of persons in each county of the circuit to be prospective grand jurors. The names shall be placed in a grand jury pool. [illegible] separate and apart from the petit jury pool. The grand jury commission shall randomly select randomly from the petit jury pool names to constitute a master grand jury roster in accordance with the provisions of this act.

(2) As nominees to be placed on [illegible], the grand jury commission:

a. May discuss the qualifications of persons in the manner with respect to sections 12 and 13 of this act and the person's fitness and ability to serve as a grand juror or the likelihood of the person being knowledgeable under section 15 of this act.

b. Shall discuss the qualifications of persons in the manner with respect to whether they are:

1. In possession of felony, or a felony from Florida.

2. A citizen of Florida [illegible] is not a part of [illegible] group.

3. A citizen of Hillsborough County.

4. Persons with a record of one or more arrests for a misdemeanor or felony offense or who having been convicted or [illegible], but if he has been discharged and his civil rights have been restored this shall not disqualify him as a prospective grand juror.

5. Persons known by the state attorney, sheriff, or police departments, as violators of the law.

6. Of sound mind, in possession of [illegible] faculties, and not incapable of [illegible].

7. Persons who for any other reason will not be, in the opinion of the grand jury commission, satisfactory grand jurors.

-23-

(3) The grade [or] commission may contact any state or local government agency for relevant information, which shall be disclosed by them to the grade [or] commission confidentially/ by telephone or in person; the grade [or] commission may inquire into the qualifications and fitness of any prospective grade [or].

(4) Upon receipt of the/required classification test with attendance by the clerk of court to perform on the test/e results, the grade [or] commission shall review the response to the classification and evaluate from the relative value based of points it feels are relative to the job. The classification of grade [or] commission with the powers and duties of the grade [or].

(5) A vote by any one or more grade [or] commissioner shall elevate a case from the relative value test.

Section 12. Qualifications of prospective grand jurors. -- A prospective grand juror shall be:

(1) A citizen of the United States of America.

(2) A resident and registered voter of the State of Florida for one (1) year and of the county for six (6) months.

(3) Able to read, write, and speak the English language understandably.

(4) In support of the constitutions of the United States of America and of the State of Florida.

Qualifications under this section shall be ascertained under oath at voir dire.

Section 1b. Disqualifications of prospective grand jurors. --
A prospective grand juror shall be disqualified by the court if he:

(1) Is a paid officer or employee of any governmental department, bureau, agency, board, or other governmental body.

(2) Is a practicing criminal attorney.

(3) Has ever been convicted anywhere of a crime of bribery, perjury, forgery, or larceny.

(4) Has ever been convicted anywhere of a crime which under Florida law would be a felony and has not since been restored to civil rights.

(5) Has any pending indictment or criminal charge against him anywhere for a felony or misdemeanor involving moral turpitude.

(6) Is under prosecution for any crime in any court anywhere.

(7) Has any present or past alliance, entanglements, or associations with organized crime or with a person associated with organized crime.

(8) Has any present or past membership in any organization proscribed or declared to be subversive by the State of Florida or by the Attorney General of the United States of America.

(9) Would refrain from voting for a finding of probable cause in a capital case irrespective of the evidence.

Disqualifications under this section shall be ascertained under oath at voir dire.

Section 17. Grand jury pool.-- Initially, at least 60 days prior to a grand jury impanelment under this act the grand jury commissioner shall randomly, or caused to be drawn, names from the county petit jury pool to be placed in the grand jury pool. The chief judge shall determine the number of names to be drawn. There is created grand jury pools may be maintained. Names for the grand jury pool shall be placed in a container such box and shall be mingled well by or other for the grand jury commissioner to randomly draw names for the grand jury pools, to and names when necessary if to eliminate names determined to be unavailable, names from the county, indicated, or otherwise permanently unavailable for jurisdictional grand jury service. The clerk of court shall have custody of the grand jury pool container and box. Names for the grand jury pool may be randomly selected through electronically stored information or the computer court files from the petit jury pool.

MEMORANDUM

EXHIBIT "E"

TO: CRB Board Council

DATE: January 28, 1977

SUBJECT: January Forum Division Report

FROM: Rev. Irvin Elligan, Jr.
Forum Chairperson

THE SELECTION PROCESS FOR THE GRAND JURY. PART II

The speakers were the Presiding Judge of the Dade County Grand Jury, Hon. Harold Vann, and the President of the Grand Jury Association of Florida, Inc., Mr. Ben H. Caldwell.

A. SUMMARY OF THE DISCUSSION

The question before the Forum was whether or not the Presiding Judge believed there may be ways that the judges and jury commissioners may be assisted in the selection process or whether there is a need to change the system.

The other question before the Forum was whether or not the proposal by the Grand Jury Association of Florida is an answer regarding the selection process.

Judge Vann stated that the present Grand Jury selection process is a process instituted by special legislation by the Florida Legislature which does not apply to any other jurisdiction in the State of Florida.

He claims, as determined by his participating in state conferences of circuit court judges, that no other area in the State of Florida desires the present Dade County system of selecting grand jurors. In other areas, the grand jurors are selected in the same way the petit jurors are, which is, by random selection.

Judge Vann further claims that the circuit court judges here in Dade County, traditionally, and presently, do not desire to be involved as jury commissioners in the selection process. However, he believes that there is no discrimination against

-19-

blacks or Latins or the poor. On the other hand, judges have to appoint those who they know because they have the duty to certify those who are qualified. He claimed that the judges would desire to be relieved from the duty of being involved in the selection process if there were some way to exclude those who were not qualified.

Mr. Criswell reported that the Grand Jury Association of Florida, Inc. proposal is the same as the proposal by Representative Alan Becker in relation to the initial selection process. However, their proposal provides a screening function to exclude those who are not qualified. See the January Forum Agenda and Brief, Page 1.

Mr. Bogart, Clerk of the United States District Court reports that the selection process for the Grand Jury in the federal courts is initially the same as the one proposed by Representative Becker, but also provides a screening process. See below. However, they claim that the screening process is different than the one proposed by the Grand Jury Association of Florida, Inc. They claim that, rather than using subjective criteria, and providing an opportunity for any judge to veto a proposed grand juror, the federal system is much simpler, being implemented by a clerk, where the basis for exclusion is objective.

3. SUMMARY OF ANALYSIS AND POLICY

In the State of Florida, the Grand Jury Association of Florida, Inc. proposes as qualifications, that a prospective grand juror shall be: (1) a citizen of the United States of America, (2) a resident and registered voter of the State of Florida for one year and of the county for six months, (3) able to read, write, and speak the English language understandably, and (4) in support of the Constitution of the United States of America and the State of Florida.

In the present law, or in the proposal by the Association, there is no declaration that all citizens have the right to have an opportunity to be considered for service on grand juries, nor is there any statement prohibiting discrimination on account of race, color, religion, sex, national origin or economic status.

Mr. Bogart, Clerk of the United States District Court, and Mr. Barmaby, Jury Supervisor, United States District Court, have provided CRB information that includes federal statutes, United States courts' regulations and local administrative rules and policies regarding the selection process.

In Title 28, U.S.C.A., Section 1861 declares that all citizens shall have the opportunity to be considered for service on federal grand juries.

Section 1862 provides that no citizen shall be excluded from service as a grand juror on account of race, color, religion, sex, national origin, or economic status.

Section 1863 provides a plan for random jury selection which allows for a plan to be reviewed and modified in order to be consistent with Sections 1861 and 1862.

Section 1864 provides for an objective qualification process through the completion of a juror qualification form.

Section 1865 provides for qualifications for Grand Jury service whereby any person is deemed qualified to serve unless he (she), (1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the district; (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; (3) is unable to speak the English language; (4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or (5) has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

Section 1866 provides for the random selection and summoning of jury panels. It provides that no person shall be excluded from service except as provided in Section 1865. It further provides that (1) a person may be excused upon the showing of undue hardship or extreme inconvenience, (2) excluded by

the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded upon challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations.

Section 1866 further provides that the number of persons excluded under Clause 5 shall not exceed one percent of the number of persons who return completed qualification forms, and further provides that no such person be excluded unless the judge in open court makes such a determination and not be inconsistent with Sections 1861 and 1862, and further provides that the names of persons excluded under Clause 5, together with detailed explanations for the exclusions, be forwarded to the judicial council of the circuit for redress for any misapplication.

Mr. Kormsby has sent to CRS information showing that of 161 persons serving on the present seven Miami federal grand juries, there are 20 Blacks, 10 males and 10 females, and 9 persons with Spanish surnames. Of the Blacks, 14 who listed occupations, listed maid, service attendant, assistant supervisor, drug abuse counselor, maintenance worker, maintenance and repair, nurse's aid, teacher, secretary, entertainer, selector, aircraft cleaner, laborer, and letter carrier.

Attorney Jose Villalobos, an auditor to the January Forum, and a concerned citizen of Cuban extraction, has sent to CRS the names and addresses of persons who have been called to the Grand Jury venire for the past several years. For the 1976 Grand Jury Spring Term, of 111 persons, two are Black and none with Spanish surnames. For the 1976 Grand Jury Fall Term, of 66 persons, three are Black, and none with Spanish surnames.

C. RECOMMENDATIONS

Option 1. CRB to present to the Dade County Delegation at its community hearing, and present to the appropriate state legislative bodies, a report proposing the adoption of a selection system for the Grand Jury which shall have provisions similar to the provisions of the federal system for selecting their grand juries. It is further recommended that the per diem be increased from the $10.00 presently available for service by a grand juror to $15.00 per diem (this is $5.00 more than the federal rate per diem). The Forum Committee recommends this option.

Option 2. CRB to present to the above parties a report, but not a specific proposal or recommendation, but a request that there should be a reform and change of the selection process for the Grand Jury because of CRB findings that there is a perception affecting community relations that the selection process is not fair in serving the whole community.

MEMORANDUM

Exhibit "I"

TO	CJA Forum Committee	DATE	February 16, 1977
		SUBJECT	Summary of the Review of Grand Jury Association Proposal by William Kerns Jury Supervisor, U. S. District Court
FROM	Mr. John D. Due Program Officer Forum Division		

Mr. Kerney wrote comments on the Proposed Revision of Chapter 905 F.S. The following is a summary of his comments.

Summary of proposed grand jurors' selection and qualifications:

At the end of Section 11, relating to eligibility for consideration for Grand Jury service, Mr. Kerney wrote that no individual shall have a right to exclude a person from serving by a personal decision.

At the end of Section 12, relating to initial selection of prospective grand jurors, Mr. Kerney scratched out the word "pool" in the statement that the Grand Jury pool shall be randomly selected from the randomly selected petit jury pool, provided the latter selection was from a list of registered voters in Dade County.

Under Section 13, relating to the Grand Jury Commission, proposing that the Grand Jury Commission be composed of the circuit judges of that circuit, Mr. Kerney rejects this whole proposal and section and states that summoning, etc., should be by the clerk of the court.

Under Section 14, relating to duties of the Grand Jury Commission where it proposes the duty to randomly select, proposing that the Grand Jury Commission has power to discuss the qualifications where it proposes that the Grand Jury Commission may contact agencies for relevant information, where it proposes the Grand Jury Commission shall review the responses on the questionnaires and, where it proposes that any one Grand Jury Commission may eliminate a name from a tentative venire list, Mr. Kerney rejects this total section and states that education level, income, social status, are not criteria for anything but showing a degree of bi

-11-

etc., and should not be grounds for service.

Under Section 15, relating to qualifications of prospective grand jurors, Mr.Kennaby rejects the paragraph that a Grand Jury shall be "in support of the Constitution of the United States and the State of Florida", because, as he states, All the citizens are expected to do this.

Under Section 16, relating to disqualification of prospective grand jurors, Mr.Kennaby rejects All nine grounds.

Under Section 17, Mr.Kennaby rejects the proposal regarding the Grand Jury pool. This relates to how the Grand Jury pool is obtained.

Under Section 18, relating to the Grand Jury venire, Mr. Kennaby rejects all four proposals. Section 18 relates to how the Grand Jury venire is obtained. Mr. Kennaby states that the clerk of the court draws and summons the venire that there may be excuses for medical, children, etc. All others shall attend and enter the courtroom—first twenty-three drawn at random which constitute the Grand Jury.

Under Section 19, relating to qualifying the Grand Jury venire, Mr. Kennaby rejects the total proposal.

Under Section 20, relating to exemptions from Grand Jury service, Mr. Kennaby amends the first proposal that would exempt one if one had served within the past five years and is amended to two years. He further amends the proposal to exempt one from Grand Jury if one is a practicing medical or dental doctor, acting clergyman, or a practicing civil attorney, which is amended with the additional statement "if they wish to be excused."

Under Section 21, relating to excuses from Grand Jury service, where the judge may at his discretion excuse a person who is sixty-five years or above, Mr. Kennaby would amend to add "if the person desires to be excused", and where it proposes to

TO: CRB FORUM COMMITTEE
February 16, 1977

excuse a person who is a parent of a young child or children and whose presence is needed at home, Mr. Hornsby would add the words "under ten years" after the words "young child". In other words, Mr. Hornsby recommends the adoption of the federal requirements.

Under Section 22, regarding the challenge to the Grand Jury venire, relating to how, prior to impanelment, the court, the state attorney, and the public defender may orally examine prospective grand jurors, with the state attorney and the public defender having the right to make peremptory challenges, Mr. Hornsby would reject this total proposal, and states that "none of these should have a right to examine or challenge."

Under Section 23, relating to the drawing of Grand Jury panel, Mr. Hornsby rejects the total proposal.

Under Section 24, regarding the Grand Jury's oath, where it initiates a proposal that the court, immediately after the jury is drawn, the court shall administer the following oath.... "you will make true presentments of your findings; unless ordered by the circuit court you will not disclose the nature or substance of the deliberations of the Grand Jury...", Mr. Hornsby would change the words "the jury is impanelled" to the words "the jury is drawn" and he would strike the phrase in the above "unless ordered by the circuit court".

Under Section 26, relating to challenge to individual grand jurors, Mr. Hornsby rejects the total proposal.

Under Section 27, relating to effect of successful challenge, Mr. Hornsby rejects the total proposal.

Under Section 28, regarding effect of omission or commission of error, Mr. Hornsby scratches out the term "any deficiency or excess of names in a Grand Jury pool or venire shall not be deemed to be an error."

Under Section 30, relating to functions of the Supreme Court, Mr. Hornsby rejects the proposal to prepare a prospective Grand Jury questionnaire containing sufficient questions.

Mr. Kornsby also rejected this proposal relating to authority of the Grand Jury, organization of the Grand Jury, and administration of the Grand Jury. These subjects appear to have an impact upon the selection process, therefore, his comments relating to the selection process are included herewith. Mr. Kornsby would reject the proposals that the clerk of the circuit court would have safekeeping custody of the Grand Jury pool; would reject the proposal that the clerk would prepare a list of names drawn from the pool for the venire; would reject the proposal that the clerk would issue questionnaires under direction or supervision of the judge. He would also reject the proposal that the clerk make available the questionnaires upon completion to the Grand Jury Commission, the state attorney, and the public defender.

EXHIBIT "A"

City Hall
Miami, Florida

TELEPHONE

LAW DEPARTMENT
[illegible]

CITY ATTORNEY
[illegible]

SECURITY CITY ATTORNEY
[illegible]

November 22, 1976

Honorable Harold R. Vann
Chief Circuit Court
Dade County
Eighth Circuit
Miami, Florida 33130

Dear Judge Vann:

As you may be aware, the [redacted] City of Miami [redacted] Association [redacted], a copy of which is being [redacted] the [redacted] [redacted] [redacted]

guardian of the police power of the state is a system and means whereby all of the people of Dade County can participate directly in the administration of their government.

PASSED AND ADOPTED this 13th day of November, 1975.

ATTEST:

_____
CLERK

_____
CLERK ASSIST.

APPROVED AND AUTHORIZED BY:

_____
Arthur H. Gerber
Assistant City Attorney

Approved As To Form And Circumstances:

_____
George H. Cole, Jr.
City Attorney

-2-

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
	)	
-vs-	)	CASE NO. 77-28650 A
	)	
	)	
MARVIN FRANCOIS,	)	
	)	
Defendant.	)	
	)	

The above-entitled case came on for hearing before The Honorable ELLEN J. MORPHONIOS, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Friday, September 23rd, 1977, commencing at or about 9:00 o'clock A.M.

APPEARANCES:

RICHARD E. GERSTEIN,
State Attorney,
on behalf of the State of Florida.

MARVIN EMORY, ESQUIRE,
on behalf of the Defendant.

• • •

[Thereupon, the following proceedings were had:]

THE COURT: Marvin Francois.

Mr. Emory, arraignment.

MR. EMORY: If it please the Court, in light of the recent development of the Grand Jury situation, we would rather stand mute to these charges.

THE COURT: Okay, entering the maximum plea, giving you the full opportunity subject -- you know the plea is entered subject to your right to file whatever motions you want. Entering the maximum plea of not guilty with a demand for jury trial. Setting it for trial before His Honor, Judge Fuller, on November 7th, together with the Co-Defendant.

You can file whatever motions you desire to, Marvin.

MR. EMORY: Yes, ma'am.

Thank you.

[Thereupon, this hearing was concluded.]

* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA :
: SS.
COUNTY OF DADE :

I, MONA R. GESSE, do hereby certify that the cause of STATE OF FLORIDA, Plaintiff, versus MARVIN FRANCOIS, Defendant, case number 77-28650 A, pending in the CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, came on for hearing before The Honorable ELLEN J. MORPHONIOS, as Judge, on Friday, September 23rd, 1977; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, numbered from 1 to 2, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings in said cause.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 20th day of May, 1978.

MONA R. GESSE,
Registered Professional Reporter

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA.

CRIMINAL DIVISION

THE STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	No. 77-28650
vs.	)	
	)	
MARVIN FRANCOIS,	)	
	)	
Defendant.	)	

Metropolitan Justice Building,
Miami, Florida,
Thursday, 12:30 p.m.,
November 3, 1977.

- - -

The above-entitled case came on for sounding before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

- - -

APPEARANCES:

RICHARD E. GERSTEIN, State Attorney, by
ROBERT KAYE, Assistant State Attorney,
Attorney for Plaintiff.

MARVIN EMORY, Esq.,
Attorney for Marvin Francois.

GOODHART & ROSNER, by
DAVID GOODHART, Esq., of counsel,
Attorneys for Beauford White.

THE COURT: Mr. Emory informed me he was in a position where he could not represent one of the defendants in this case. I was waiting for the motion.

MR. KAYE: I was handed a motion today which is probably the motion you are waiting for.

MR. EMORY: Your Honor, I spent some four or five hours with Marvin Francois. Those hours were spent only recently this week.

I do not know whether Your Honor wishes to consider the motion now.

THE COURT: I understand your problem. I do not blame you. I am sure the McKinney trial caused you a backup.

Your motion to withdraw is granted. We will appoint Nathan Diamond to represent Mr. Francois.

Other than that, are we ready?

MR. KAYE: No, Judge. Let me explain the position. We had depositions scheduled for this week.

THE COURT: How is Mr. Sepe?

MR. KAYE: That is their problem.

MR. GOODHART: We had a conversation last week with Mr. Kaye. Yesterday he was in

hearing all afternoon and I received a call. My last conversation with him, he said that he is feeling fine and I think he told you the same as he told me.

MR. KAYE: With limitations.

MR. GOODHART: He would be able to try this case in January, full steam ahead.

MR. KAYE: I was told that the doctor has limited his activities, trial-wise, to either one or two cases. There is one case in November and two in December, and he cannot get to this one in time. He did mention January.

We had an agreement in order to save the State money that we would take the three depositions at one time. We canceled the depositions until Your Honor ruled on the motion by Mr. Emory.

MR. EMORY: Mr. Sepe was not available yesterday.

THE COURT: I just hate to have the guys sitting in the jail.

MR. GOODHART: I do not think you are going to find too many objections from Adolphuis Archie or Beauford White.

Judge, Mr. Sepe is out of town today.

He got called to New York yesterday afternoon.

THE COURT: I have no idea what the circumstances are. Do you want to start the new year out with this case? How is January 9?

MR. KAYE: That will be all right.

MR. EMORY: I was explaining that I had a lengthy conversation with Marvin Francois and brought him up-to-date of the facts, but even if the motion was not granted I would be requesting a continuance, and I told him that would be jointly charged, I believe, in my opinion, to which he understood and agreed.

THE COURT: Whatever you do, Nathan Diamond has agreed to accept that. I knew that you were going to ask to be off the case.

While I would not normally approve of somebody accepting an appointment at this point, but in this instance I understand the situation.

[Whereupon, the sounding was concluded.]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
Criminal Division

THE STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 77-28650
	)	
MARVIN FRANCOIS,	)	
	)	
Defendant.	)	
	)	
----------X		

Metropolitan Justice Building,
Miami, Florida,
Monday, 8:00 a.m.,
November 28, 1977.

The above-entitled case came on for motions before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

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THE COURT: Marvin Francois. I believe it is off the calendar. I know what it was about. Mr. Diamond wanted an evaluation by somebody.

I appointed Dr. Mutter for that purpose. The report date is 12/12.

[Whereupon, the proceedings were concluded.]

- - -

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
Criminal Division

THE STATE OF FLORIDA,

Plaintiff,

vs.

MARVIN FRANCOIS,

Defendant.

Case No. 77-28650

Metropolitan Justice Building,
Miami, Florida,
Tuesday, 8:30 a.m.,
January 3, 1978.

The above-entitled case came on for hearing before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

- - -

APPEARANCES:

RICHARD E. GERSTEIN, State Attorney, by
ROBERT KAYE, Assistant State Attorney,
Attorney for Plaintiff.

BENNETT H. BRUMMER, Public Defender, by
NATHAN DIAMOND, Esq., Specially Appointed
Public Defender.
Attorney for Defendant Francois.

LAW OFFICES OF ALFONSO SEPE, by
ALFONSO SEPE, Esq., of counsel,
Attorney for Defendant Archie.

- - -

THE COURT: Adolphus Archie.

MR. DIAMOND: I am going to need my client. He specifically requested that he be present for all court proceedings from now on.

MR. KAYE: Your Honor, Marvin Francois, Adolphus Archie and Mr. White, Buford White, were supposed to be on the calendar for motions.

Let the record reflect at this time that I received a pack of motions from Mr. Sepe, who represents Mr. Archie, this morning, just before court, which said that he wanted a hearing on the 3rd of January, and he changed that until next week to give me an opportunity to respond.

I have not received any of the motions from Mr. White's attorney although he said the motions are forthcoming.

As far as the motions of Marvin Francois, the only two motions that we---

MR. DIAMOND: One is severance, and I will forego the motion to dismiss, today.

I have talked to Mr. Kaye and really we have been discussing it all along in terms of discovery in the case. At this time I think he will concede that there is no way around severance as to the defendant, Marvin Francois.

THE COURT: He is the one that did not make a

statement?

MR. DIAMOND: Yes, but the two co-defendants did make statements implicating him.

Also with regard to Mr. Francois, I understand he is also set for trial next week. I was in court once before with Mr. Kaye and I advised the Court, and at this time I am convinced, as I was in the statements that I made to the Court on prior occasions, that there is no way I am going to be able to get this thing to trial for next week.

THE COURT: Do you agree with his petition for severance, Mr. Kaye?

MR. KAYE: Yes, Judge.

For the record, I would say that there are statements incriminating him from Adolphus Archie and Buford White. There is no statement from Francois.

THE COURT: The statements from White and Archie cannot be handled in such a manner as to not violate the rule?

MR. KAYE: I think that would be impossible.

MR. DIAMOND: Secondly, Your Honor, I have a---

THE COURT: What about the timing relative to the trial?

MR. DIAMOND: The only other motion that I filed is the motion to dismiss the Grand Jury indictment based on the Blue Ribbon Grand Jury and requesting an

evidentiary hearing on that point, but it--I am going to forego any arguments on that. In fact, I am not going to ask for a hearing on it until a later date simply because I do not think there is any way I can get this case to trial by next week.

This is the first deposition I received back. It numbers some 260 pages of testimony. I received it on Friday.

THE COURT: What is your situation on time, Mr. Kaye?

MR. KAYE: On time?

THE COURT: Do you agree that he is going to have an impossible task to get ready by next week?

MR. KAYE: No. I do not agree to that. I understand he has some problems---

THE COURT: What about the other defendants?

MR. KAYE: I do not know what their problems are. Apparently they are the same as his.

THE COURT: Be here promptly at nine o'clock on Friday morning. I told you before I will not push you to try the case if due diligence has been taken, but I am not going to wait here on Monday morning.

MR. KAYE: One of the motions is a motion to suppress which will be rather lengthy.

MR. DIAMOND: That--I do not have any suppression problems. As I understand it, there is no physical evidence,

there is no statement with regard to my client.

THE COURT: What are the other motions?

MR. DIAMOND: Judge, here is Mr. Sepe, and I think Mr. Dougherty is here on behalf of Mr. Goodhart.

I have not received any copies of any motions filed in this case. I understand Mr. Sepe---

MR. KAYE: Some of the motions being disposed of, I think, today--- Just to fill you in, the Court was thinking of hearing motions on Friday.

MR. SEPE: Whatever the Court wants.

MR. KAYE: As far as the motion to compel is concerned, the State has no objection to 1 and 2. The Court would have to rule on 3 and 4.

MR. SEPE: I hope you understand, Your Honor, I was not expecting this to be heard today. That is why there seems to be some disorder--- I do not know what this is about.

THE COURT: Go ahead.

MR. KAYE: So far as 3 is concerned, I think Detective Derringer has stated in his deposition that he did not retain the notes.

MR. DIAMOND: I believe so.

MR. KAYE: So I do not think there are any--as far as No. 4 is concerned, I think that would be a waste of time.

I have gone through the copious copies of the

police reports which would be about an inch and a half to two inches thick. I do not think there is anything in there relating to Brady. I think I have given counsel all the Brady material I have.

However, if the Court wants to read---

THE COURT: I think counsel takes the position that he would rather not have it heard in court today.

MR. SEPE: That is correct, Your Honor.

THE COURT: I will be glad to review it.

MR. KAYE: The only other problem I have is the copying of it. It is rather thick.

As far as No. 4 is concerned---

THE COURT: And put a copy of the motion on top of it so I will know what I am reviewing.

MR. DIAMOND: While we are on this motion to compel, I just had an opportunity to read it. There was a problem that occurred during the depositon of Mr. Dubois, the polygraph examiner who examined Mr. Sepe's clients and two other witnesses in the case

During the course of the deposition, I requested to see the charts that Mr. Dubois ran, for my own edification as well as possibly making that available for an expert that I intended to hire to review Mr. Dubois' conclusions.

At that time Mr. Sepe objected on behalf of his

clients Adolphus Archie, to my having copies of his client's polygraph charts.

I think I would be entitled to them pursuant to the rule, and I really do not see any grounds by which Mr. Sepe would have any standing to---

THE COURT: Is that up today? Is there a motion filed?

MR. DIAMOND: We were going to discuss it with the Court today. That was by agreement with Mr. Kaye, because it came up during the deposition.

MR. KAYE: It came up during the deposition and at this point, Your Honor, the State's position is that I would make available to all counsel whatever material is in the possession of Mr. Dubois.

MR. DIAMOND: All right.

MR. SEPE: On behalf of Mr. Archie, Mr. Archie's position and objection is predicated on the fact that the chart itself is not admissible into evidence, and it is not a matter that should be the subject of an examination by any other expert.

If any other defendant wants to utilize an expert to contradict one of the State's experts, then that expert is free to conduct his own polygraph testimony in this matter, but the polygraph expert material cannot come out in court, anyway. You cannot call a polygraph expert to

analyze another polygraph expert's chart in court. That is not going to be part of this case.

THE COURT: What is the purpose of it?

MR. DIAMOND: I do not know what it is, Judge. Mr. Dubois was listed as a possible State's witness. My understanding of the law is that he cannot testify to any conclusions. I do not know that he can testify to any statements he overheard or to the charts themselves.

I am not talking about conclusions--certainly Mr. Sepe would have the right to object at trial to any conclusions Mr. Dubois might come to, but I do not think he can object to me reviewing the charts which possibly could be evidence.

THE COURT: What else do we have?

You are going to provide me with the matters of Rule 4. You take the position that there are no matters in 3.

What else?

MR. KAYE: There was another motion. I am not concerned--I am willing to argue this motion at this time. I would rather hold that one off until Friday.

MR. SEPE: All right. It is the motion for the mental examination.

THE COURT: Let us do that on Friday, whatever motions you have.

MR. KAYE: The only thing I do tell the Court is that the motion to suppress is apt to be somewhat lengthy, Friday.

MR. SEPE: It is not going to be as lengthy as Mr. Kaye would suggest, but it will be longer than a bill of particulars position.

THE COURT: If I have any scheduling problems between now and then, I will let you know. Let us go ahead and set it for nine.

MR. DIAMOND: I have a two-thirty flight on Friday.

I do not have any other motions at this time.

THE COURT: All I know is there is an Archie motion for Friday and whether or not there will be motions by White, we will have to wait and see. So, at this point, we will set Adolphus Archie.

I think he has a motion to continue that is to be heard so you will need them both.

MR. SEPE: On behalf of Adolphus Archie, I am joining in the motion for continuance that Mr. Diamond spoke of.

[Thereupon, the hearing was concluded.]

- - -

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
Criminal Division

THE STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 77-28650
	)	
MARVIN FRANCOIS,	)	
	)	
Defendant.	)	
	)	
----------X		

Metropolitan Justice Building,
Miami, Florida,
Tuesday, 9:00 a.m.,
February 21, 1978.

The above-entitled case came on for motions before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

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APPEARANCES:

JANET RENO, State Attorney, by
ROBERT KAYE, Assistant State Attorney,
Attorney for Plaintiff.

PENZELL & DIAMOND, by
NATHAN DIAMOND, Esq., Specially Appointed
Public Defender,
Attorney for Defendant.

LAW OFFICES OF ALFONSO SEPE, by
ROBERT DEAN SMITH, Esq., of counsel,
Attorneys for Archie.

- -

BERT FRIEDMAN CIRCUIT COURT REPORTER

MR. DIAMOND: I have motions set on Friday in this case. I briefly discussed it with the State. I think there are only two that should be heard this morning.

One is a motion to produce. It states in that motion that Adolphus Archie, formerly a defendant in this case and presently a State witness in this case, gave a statement during the course of his representation that was tape-recorded to Mr. Sepe, his defense counsel. I would like a copy of that statement pursuant to Rule 3.220 which gives me the right to have all statements that are known to the State. There is a tape-recorded statement. I would like the tape-recorded statement or the transcript of that statement. It is still in Mr. Sepe's possession.

I do not think the lawyer-client privilege would apply any longer in that during the course of my deposition Mr. Archie freely waived that privilege in discussing with me all of his conversations with his defense lawyer, Mr. Sepe.

MR. KAYE: In response, I do not have these tapes. I have never been made privy to these tapes. They are not in the possession of the State.

The only information we had was that we knew Mr. Sepe had taken some statement. Mr. Sepe's office has been made aware by me of this motion. I would ask, number one, that Mr. Sepe be here to respond since he represented

Mr. Archie and they are in his possession or, perhaps, Mr. Smith can respond at this time.

MR. SMITH: I advised Mr. Sepe concerning the State's request for that or Mr. Diamond's request. Mr. Sepe indicated there would not be any problem. He wanted to get back with Mr. Kaye. He has been tied up in West Palm and had not had an opportunity to do that. He will be available, I would think in the next two to three days.

THE COURT: Let me know on Thursday. I want to see what his position is before I rule on it. Mr. Smith can find out and get back to me.

MR. DIAMOND: The other motion I think the Court should entertain at this time--the other can probably wait until the time of trial--is the motion for statement of aggravating circumstances. As the Court knows, in a murder trial there are two portions of the trial. The first portion is dealing with the guilt or innocence and the second portion dealing with whether the jury is going to recommend mercy in that it is going to recommend to the Court to sentence the defendant to a life term in prison or the death penalty.

I think the due process should require that the defendant be made known of all circumstances the State intends to prove up in the second portion of its trial assuming there is a verdict of guilty of murder in the first degree.

I think the defendant should have notice as to what aggravating circumstances the State intends to prove up in the second portion of the trial. I think the defendant should be given notice of that and have an opportunity to respond to it.

THE COURT: Do you wish to respond?

MR. KAYE: It seems somewhat premature at this time. The elements of aggravating circumstances are fairly well delineated within the rules and only go along certain lines. I am sure he knows as much about this as the State does at this time.

THE COURT: The motion is denied at this time. You may want to bring it up later. They are outlined by statute. I think you are quite competent. Otherwise, I would not have appointed you.

MR. DIAMOND: I understand what the rules are. I am asking for the facts the State is going to prove up.

THE COURT: That is denied.

MR. DIAMOND: Without prejudice?

THE COURT: Yes.

MR. DIAMOND: The motion to produce I will get notice on when?

THE COURT: As soon as you tell me what Mr. Sepe's position is.

MR. DIAMOND: I do not know that he has a position

at this time.

THE COURT: I do not, either.

MR. DIAMOND: I do not know if he has standing to raise any position.

THE COURT: He has the same standing to raise a position as he does to be called upon to produce something. I want to hear his feelings as to attorney-client privilege.

MR. DIAMOND: As I say, I have taken quite extensive deposition of Mr. Arenie wherein he discusses his entire conversation with Mr. Sepe. He does state there was a tape-recording made by Mr. Sepe and I am not privy to that statement.

MR. KAYE: It was the Buford White case. I have discussed it with Mr. Goodhart and we know Mr. Diamond has depositions scheduled all this week which relate to both defendants as far as witnesses are concerned. I would like very much to try the case on Monday.

MR. DIAMOND: I am set for trial on Monday.

THE COURT: In White?

MR. DIAMOND: No, I am set for trial in Francois.

THE COURT: Yes. I know. We are glad to have you around.

MR. DIAMOND: I thought it was specially set. That is the only reason I wanted to bring it to the Court's attention.

THE COURT: I set a number of them with the team before.

MR. DIAMOND: I am trying to get this thing to trial.

THE COURT: I can tell. I am overwhelmed by your effort, Mr. Diamond.

[Whereupon, the proceedings were concluded.]

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
Criminal Division

THE STATE OF FLORIDA,

Plaintiff,

vs. Case No. 28650

MARVIN FRANCOIS,

Defendant.

Metropolitan Justice Building,
Miami, Florida,
Thursday, 9:00 a.m.,
February 2[illegible], 197[illegible].

- - -

The above-entitled case came on for motions before The Honorable Richard S. Fuller, Circuit Judge pursuant to notice.

- - -

APPEARANCES:

JANET RENO, State Attorney, by
ROBERT KAYE, Assistant State Attorney,
Attorney for Plaintiff.

PENZELL & DIAMOND, by
NATHAN DIAMOND, Esq., Specially Appointed
Public Defender,
Attorney for Defendant.

- - -

MR. KAYE: May I state on the record, while we are waiting for Mr. Francois, the position of the State?

We have been in contact with Mr. Sepe's office. He has no objection to turning over the tape and the State has no objection to turning over the tape. It puts us in the position of---

MR. DIAMOND: I would like to do this in front of my client. I do not necessarily want to. I am saying he wrote a letter to the Court that he has not been present for the meetings that are heard.

THE COURT: He need not be here.

MR. DIAMOND: I would waive his presence if he did not write this letter to the Court and advise me.

THE COURT: I have not seen any letter where he says that. I am glad to have people over.

MR. KAYE: I have no objection to him being here.

THE COURT: You just do not want to wait around.

MR. KAYE: I talked to Mr. Smith. He talked to Mr. Sepe. He said it is all right with the exception that they have to talk to Mr. Archie.

THE COURT: Archie is the fellow who has to relieve Mr. Sepe of his responsibility under the attorney-client privilege and you may have taken that deposition giving you all of that information, but if there is a specific item wanted I think it is a matter of getting Mr. Archie over

here and having him agree or advise his counsel it is all right to do so.

Mr. Smith was going to call this morning and report back. I want him to report back.

MR. DIAMOND: I do not necessarily want to wait. You start getting this kind of grief.

THE COURT: You know, I think lawyers should run their cases.

MR. DIAMOND: I am running the case. No problem with that. He just wants to be here to hear what I have to say.

[Thereupon, the defendant entered the courtroom.]

MR. DIAMOND: Now the defendant is present. I think the State stated their position previously. They are not opposed to my getting the transcript or tape or whatever it is.

MR. KAYE: The State's position is that we are aware that Mr. Archie has given some taped statement to his lawyer. Mr. Archie on his deposition told Mr. Diamond essentially what was in those tapes.

Mr. Diamond has sought to have those tapes. I do not, and the State does not, have them. They are in the possession of the defense lawyer, Mr. Al Pope. He has been contacted by both sides and indicated to me he is

willing to turn the tapes over to us providing he gets the approval of Mr. Archie which he is seeking today. That is where we stand at this point.

THE COURT: Who is going to bring Mr. Archie before us or will there be an affidavit?

MR. KAYE: I do not think it is necessary to bring Mr. Archie forward. I think the representation of his attorney will be enough for the State.

MR. DIAMOND: I think once there is a breach in this case, when I take his deposition for two days and he told me throughout about his conversation with his attorney, I do not think it applies anymore.

THE COURT: It may or may not. I like to act in an abundance of caution, just like we waited for Mr. Francois even though it was not critical to his trial. We waited for him and the same goes for Archie. An affidavit releasing Mr. Sepe from the attorney-client privilege would be appropriate.

MR. KAYE: I will find out from Mr. Sepe and I will contact Mr. Diamond.

MR. DIAMOND: While we are still before the Court, the other day I left my card with the court reporter and asked that she send or prepare a transcript of Mr. Archie's sentencing for me. I received a call from the court reporter's firm to the effect that since I was "appointed,"

I would have to have approval from--I am not sure what.

THE COURT: There is one filed in the Clerk's file. All you have to do is photocopy it.

[Whereupon, the proceedings were concluded.]

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

THE STATE OF FLORIDA,)

Plaintiff,)

vs.) NO. 77-28650A
77-28650B

MARVIN FRANCOIS and)
BEAUFORD WHITE,)

Defendants.)

- - - - - - - - - - - - - - - - - x

Metropolitan Justice Building,
Miami, Florida,
Monday, 11:00 a.m.,
February 27, 1978.

The above-entitled case came on for hearing before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

- - -

APPEARANCES:

JANET RENO, State Attorney, by
ROBERT KAYE, Assistant State Attorney,
Attorney for Plaintiff.

PENZELL and DIAMOND, by
NATHAN DIAMOND, Esq., of counsel,
Attorneys for Defendant Francois.

GOODHART and ROSNER, by
DAVID GOODHART, Esq., of counsel.
Attorneys for Defendant White.

- - -

MR. KAYE: Judge, we are here for the trial of either Beauford White or Marvin Francois. We are ready.

MR. GOODHART: I am ready.

MR. DIAMOND: I am ready.

MR. KAY: We would like to have some indication from the Court when we would start jury selection.

THE COURT: I thought I indicated earlier it would be about one-ish. I left a message, as a matter of fact.

MR. GOODHART: I did not hear until eleven o'clock.

MR. DIAMOND: Beauford White is going to go first?

THE COURT: Yes, sir.

MR. DIAMOND: Marvin Francois will follow?

THE COURT: He will follow that. I am not sure what order.

I also have another case called Alonzo Bryant, which I anticipate trying between those two.

MR. DIAMOND: Do you want me on a standby basis?

THE COURT: I will call you, Nathan.

MR. DIAMOND: I will probably be around.

MR. GOODHART: Is it sufficient if we report back at one?

THE COURT: I do not know how fast I am going to move here. It may be later than that.

MR. GOODHART: I will report back at one.

MR. KAYE: Let me advise the Court at this point, I conferred with counsel on how long it might take to select a jury, and he indicates it would probably be a lengthy jury selection.

You indicated to have witnesses ready, and I do not really know how to work that. We could spend the afternoon picking a jury and take testimony tomorrow.

THE COURT: I do not anticipate you taking a full afternoon to pick the jury.

MR. GOODHART: If it please the Court, I have an appointment between five-thirty and six o'clock in my office. I would beg the Court's indulgence in that regard.

I do not know how long it will take to pick a jury.

THE COURT: I will work with all of you as best I can as long as I am satisfied you men are

working to move your cases. I will certainly do what I can to help you.

I am not here to set a marathon, but there is no reason for repetitious questions on voir dire.

MR. KAYE: I would hate to have to bring civilians in today and have them wait.

THE COURT: I do not know how many witnesses you have or your order of proof. Perhaps it may be sufficient to make opening statements or maybe have a police officer standing by or something.

I will work with you.

[Thereupon, the hearing was concluded at 11:05 a.m.]

- - -

CERTIFICATE OF REPORTERS

STATE OF FLORIDA)

COUNTY OF DADE)

We, the undersigned, do hereby certify that hereinbefore we reported in the case of The State of Florida, Plaintiff, versus Marvin Francois, Defendant, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Criminal Division, the proceedings were heard on December 3, 1977, December 12, 1977, January 9, 1978, February 21 and 23, 1978, and February 27, 1978, before The Honorable Stewart S. Miller, Judge thereof, duly authorized to and did report in shorthand the proceedings and evidence presented in said cause and that the foregoing pages, numbered 1 to 23 inclusive, constitute a true and correct transcription of our respective shorthand reports of the proceedings had in said cause.

We further certify that the rates of our respective original reports of the proceedings had in said cause are set forth below complete our respective statements.

DATED this ____ day of June, 1978.

	Dates of Attendance
LESTER M. SACHARTOFF	November 3, 1977
MARGARET ROCK	November 29, 1977, February 21 and 23, 1979
CATHRINE NORTON	January 3, 1979
GAIL P. DONNELLY, RPR-CP	February 27, 1979

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA.

CRIMINAL DIVISION

THE STATE OF FLORIDA,)

Plaintiff,)

vs.) No. 77-28650A

MARVIN FRANCOIS,)

Defendant.)

- - - - - - - - - - - - - -x

Metropolitan Justice Building,
Miami, Florida,
Monday, 11:42 a.m.,
April 17, 1978.

The above-entitled case came on for motions and motion to suppress before The Honorable Richard S. Fuller, Circuit Judge, pursuant to notice.

- - -

APPEARANCES:

JANET RENO,
State Attorney, by
ROBERT KAYE,
Assistant State Attorney,
Attorney for Plaintiff.

PENZELL and DIAMOND, by
NATHAN DIAMOND, Esq., of counsel,
Attorneys for Defendant.

- - -

I N D E X

MOTION TO SUPPRESS - 4/17/78

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
William Clay	7	28	33	
Johnnie Hall	37	40		
Leonard Glick	50	53		
Fred Graves	57	62	67	
Detective Robert Derringer	69	71		

EXHIBITS

State's	For Ident.	In Evidence
1-A, 1-B and 1-C	29	
No. 1		30
2		32
3		33

TRIAL - 4/18/78

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Charles Edward McKinney	273	278		
Victoria Levy Williams	280	291	283	
Herman E. Jarvis	284			
Julius Davis	294	302		
Detective David Rivers	303	324		
Detective William Shinego	327			
Leonard Bednarczyk, M.D.	357			

I N D E X [continued]

TRIAL - 4/18/78 [continued]

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Margaret Wooden	367	440	464	465
Johnnie H. Hall	466	509	546	546
Detective Robert Derringer	547	600		
Detective Robert Derringer [continued]		669	697 753	727
Theresa Rolle	762	778		
Adolphus Archie	792	835		

EXHIBITS

State's	For Ident.	In Evidence
1-A, 1-B, 1-C and 1-D	274	
1-A, 2-A, 3-A and 4-A		278
1-E	280	
1-F	283	
5-A and 6-A		284
No. 7		290
8		316
9		320
10		331
12, 13, 14, 15, 16, 17 and 18		332
19		356
1, 2, 3, 4, 5 and 6		356
22, 23, 24, 25 and 26		569
20		577
11		579
X		726

CHARGE TO JURY - Page 1084

I N D E X [continued]

SENTENCING - 4/24/78 - Page 1142

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Beetle Bailey	1153	1162		
Maria Korvick	1163	1165		
Muriel Hollingsworth	1174	1176		
Dolores Jolly	1177			
Mary Cooke	1179	1180	1181	
Evalda King	1182	1184		

EXHIBITS

State's	For Ident.	In Evidence
1-A Composite No. 1	1155	1153

MOTION FOR NEW TRIAL - 5/22/78 - Page 1240

MR. DIAMOND: Your Honor, just before we start on the motion to suppress, I am not sure what pretrial motions have at this point been granted and have not, because of the fact that we have three defendants. Now there are four. Well, four defendants have been charged throughout.

There were motions to adopt based on all motions previously filed. I filed a motion to dismiss the grand jury indictment in this case originally. I believe it was dismissed--I mean, it was not dismissed by this Court. It was dismissed in other courts with regard to these defendants. This Court did not dismiss the indictments against them.

THE COURT: That is true. I find the grand jury was legally constituted, and I deny the motions.

MR. DIAMOND: Fine.

I guess we can go on with this motion. Then we will proceed with some of the others.

Regarding sequestration of jurors---

THE COURT: You have to tell me--you name your motions, and we will get to them one at a time.

MR. DIAMOND: All right.

Sequestration of jurors--I do not know what the Court intends on doing with regard to that. Since we will be picking a jury this afternoon,

CHAPTER 921

SENTENCE

921.09 Fees of physicians who determine sanity at time of sentence.
921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.
921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.
921.15 Stay of execution of sentence to fine; bond and proceedings.
921.16 When sentences to be concurrent and when consecutive.
921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.
921.18 Sentence for indeterminate period for noncapital felony.
921.185 Sentence; restitution a mitigation in certain crimes.
921.20 Classification summary; Parole and Probation Commission.
921.21 Progress reports to Parole and Probation Commission.
921.22 Determination of exact period of imprisonment by Parole and Probation Commission.
921.231 Presentence investigation reports.
921.241 Felony judgments; fingerprints required in record.

921.09 Fees of physicians who determine sanity at time of sentence.—The court shall allow reasonable fees to physicians appointed by the court to determine the mental condition of a defendant who has alleged insanity as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 258, ch. 19554, 1939; CGL 1940 Supp. 8663(36); s. 121, ch. 70-339.

921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.—The court shall allow reasonable fees to the physicians appointed to examine a defendant who has alleged her pregnancy as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 258, ch. 19554, 1939; CGL 1940 Supp. 8663(36); s. 122, ch. 70-339.

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the constitutions of the United States or of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist as enumerated in subsection (6), which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5); and

(b) That there are insufficient mitigating circumstances, as enumerated in subsection (6), to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose

sentence of life imprisonment in accordance with s. 775.082.

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—s. 227a, ch. 19554, 1939; CGL 1940 Supp. 8663.246; s. 119, ch. 26.339; s. 1, ch. 72.72; s. 9, ch. 72.724; s. 1, ch. 74.379; s. 248, ch. 77.104; s. 1, ch. 77.174.

Note.—Former s. 919.23.

921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.—

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced to:

(a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or

(b) Submit a written statement under oath to the office of the state attorney, which shall be filed with the sentencing court.

(2) The state attorney or any assistant state attorney shall advise all victims that statements, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(3) The court may refuse to accept a negotiated plea and order the defendant to stand trial.

History.—ss. 9, 10, ch. 76-274.

921.15 Stay of execution of sentence to fine; bond and proceedings.—

(1) When a defendant is sentenced to pay a fine, he shall have the right to give bail for payment of the fine and the costs of prosecution. The bond shall be executed by the defendant and two sureties approved by the sheriff or the officer charged with execution of the judgment.

(2) The bond shall be made payable in 90 days to the governor and his successors in office.

(3) If the bond is not paid at the expiration of 90 days, the sheriff or the officer charged with execution of the judgment shall indorse the default on the bond and file it with the clerk of the court in which the judgment was rendered. The clerk shall issue an execution as if there had been a judgment at law on the bond, and the same proceedings shall be followed as in other executions. After default of the bond, the convicted person may be proceeded against as if bond had not been given.

History.—s. 260a, ch. 19554, 1939; CGL 8628, 8629; CGL 1940 Supp. 8663.270; s. 123, ch. 74.379.

921.16 When sentences to be concurrent and when consecutive.—A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits, shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.

History.—s. 261, ch. 19554, 1939; CGL 1940 Supp. 8663.271; s. 124, ch.

commissioners of the county shall pay to the county tax collector from the county general fund, the difference in the amount actually received and the sum of seven thousand five hundred dollars ($7,500.00).

Section 3. This act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State May 21, 1957.

CHAPTER 57-549

SENATE BILL NO. 485

AN ACT relating to county commissioners in all counties having a population of not less than five thousand eight hundred (5,800) and not more than five thousand nine hundred (5,900) according to the last official state-wide census, providing salary increase for commissioners, providing effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. In all counties having a population of not less than five thousand eight hundred (5,800) and not more than five thousand nine hundred (5,900) according to the last official state-wide census, the county commissioners shall receive a salary of twenty-four hundred dollars ($2400) per annum, to be paid in twelve (12) equal monthly installments.

Section 2. This act shall become effective immediately upon its becoming law.

Became a law without the Governor's approval.

Filed in Office Secretary of State May 21, 1957.

CHAPTER 57-550

SENATE BILL NO. 478

AN ACT to create a Grand Jury Commission in all counties in this state having a population of four hundred fifty thousand (450,000), or more, according to the last preceding federal census, and

generally relating to the grand jury in such counties, and repealing Chapter 26,518, Acts of 1951, Laws of Florida, Chapter 30,225, Acts of 1955, laws of Florida, Chapter 28,368, Acts of 1953, Laws of Florida, and all laws in conflict with the provisions of this Act.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The provisions of this act shall apply and relate to all counties in the State of Florida having a population of four hundred fifty thousand (450,000), or more, according to the last preceding federal census.

Section 2. There is hereby created a Grand Jury Commission composed of ten members as follows: the Clerk of the Circuit Court, Chairman of the Board of County Commissioners, County Supervisor of registration, Clerk of the Criminal Court of Record, and the County Judge having served for the longest, continuous term shall, each, be members of the Grand Jury Commission, and the five (5) remaining members of the Grand Jury Commission shall be appointed by the Governor, who shall appoint one (1) member from each County Commissioners' district. The term of office of each of the appointive Grant Jury Commissioners shall be four (4) years, and upon this act becoming a law the Governor of this state shall appoint three (3) Grand Jury Commissioners for a term of four (4) years and two (2) Grand Jury Commissioners for a term of two (2) years, and thereafter all appointive Grand Jury Commissioners shall be appointed for a term of four (4) years. There shall be a Chairman of the Grand Jury Commission to be elected by the members, and the Clerk of the Circuit Court shall be the Secretary.

Section 3. The Grand Jury Commission may employ such clerical assistants as may be necessary in order that it may function properly. The Board of County Commissioners of the County shall pay such assistants such sums as said Board may determine, and shall also furnish the Grand Jury Commission with such supplies and equipment as may be required in order to permit the proper functioning of the Grant Jury Commission. The compensation of such assistants, and the cost of such supplies and equipment, shall be paid out of the Fine and Forfeiture Fund of the County.

Section 4. The grand jurors in each County in this population

classification shall be paid the sum of five dollars ($5.00) for each day when in session, or in court, or such sum as the general laws of the State of Florida may provide for the payment of grand jurors, whichever may be the greater. Such payment shall be made as now provided by law. That in addition to all other compensation provided by law, each grand juror shall receive the sum of five cents (5c) per mile for every mile necessarily traveled in going from home to the courthouse, and return, when on official grand jury duty, whether attending Court, grand jury sessions or other grand jury meetings or business.

Section 5. The qualifications of persons to serve as grand jurors are as follows:

(a) Shall be a citizen of the United States of America, and a qualified elector and resident of the County.

(b) Shall be of sound mind, in possession of his, or her natural faculties and not infirm or decrepit.

(c) Shall not have been convicted of a felony or of a misdemeanor involving moral turpitude in any court within or without this state.

(d) Shall not have any pending criminal charges against him, or her, of a felony or of a misdemeanor involving moral turpitude in any court within or without this State.

(e) Shall be of good moral character, and shall be free of any present or past alliances, entanglements and associations with organized crime or with those associated therewith.

(f) Shall not be a member of any association or organization prohibited or declared to be subversive by the laws of the state of Florida or declared to be subversive by the Attorney General of the United States of America pursuant to law.

(g) Shall be intelligent, well informed and able to read and write the English language understandingly.

(h) Shall not be a public officer or employee of the United State of America, the State of Florida or any county or city therein, but this prohibition shall not apply to any person serving without compensation, pursuant to the provisions of the United States Selective Training and Service Act, or any future draft law, nor to

any person serving in the Militia or National Guard of this State.

(i) Attorneys-at-law shall not serve on the grand jury, and doctors of medicine, dentists and clergymen shall be excused upon request.

(j) Shall not have served on a grand jury in the County within a period of the last five (5) years.

Section 6. The Grand Jury Commission shall meet annually, on or before the first Monday in March of each year, and prepare a list of five hundred (500) names of persons qualified under the provisions of this act, and morally fit to serve as grand jurors, and shall file the same with the Clerk of the Circuit Court, and the names of each of said persons shall be written upon a separate slip of paper and folded and placed, together with the list itself in a secure metal box to be known as the "GRAND JURY BOX", which shall be securely locked and sealed, and the names of one or more of the Grand Jury Commissioners, together with the date, shall be written across the seal, and the box shall be delivered to the Clerk of the Circuit Court, who shall securely keep the same in a safe place, and the key thereto shall be kept by the Grand Jury Commission.

In preparing a list of names of prospective grand jurors, as provided by this act, the Grand Jury Commission shall make such investigation as it may deem necessary to determine the qualifications and moral fitness of persons to serve upon the Grand Jury. That upon the GRAND JURY BOX becoming depleted of names, the Grand Jury Commission shall immediately meet and refill the same, as provided by this act.

If the list of names of prospective grand jurors or the number of names of prospective grand jurors written on slips of paper and placed in the GRAND JURY BOX is more, or less than five hundred (500), it shall not affect the validity of the GRAND JURY BOX or any Grand Jury drawn therefrom.

Section 7. That the Grand Jury shall be drawn as provided by law; however, the members of the Grand Jury Commission shall be notified by the Clerk of the Circuit Court of the time and place of drawing the Grand Jury, and a majority of the members of the Grand Jury Commission shall appear at the drawing of the Grand Jury, and be present when the seal on the GRAND JURY BOX is broken and the box unlocked and when the Grand Jury is drawn,

Best Copy Available

passage and approval by the Governor, or upon becoming a law without such approval.

Became a law without the Governor's approval.

Filed in Office Secretary of State May 21, 1957.

CHAPTER 57-531

SENATE BILL NO. 477

AN ACT to provide for rotating circuit judges who shall draw, empanel and preside over the grand jury during each term of circuit court in all counties in this state having a population of four hundred fifty thousand (450,000), or more, according to the last preceding federal census, and providing for the excusing of persons summoned for grand jury service, and other matters relating thereto.

Be It Enacted by the Legislature of the State of Florida:

Section 1.—That in all counties in this state having a population of four hundred fifty thousand (450,000), or more, according to the last preceding federal census, the Grand Jury shall be drawn, empaneled and presided over during each term of Circuit Court on a rotation basis among the several Circuit Judges, beginning with the Circuit Judge designated as "Division A" and continuing alphabetically as to the remaining divisions of the Circuit Court, provided that if any circuit judge is unable to draw, empanel and preside over the Grand Jury then the Circuit Judge designated as the next alphabetical division of the Court shall so act in his stead.

That no person summonsed to serve as a grand juror shall be excused by any Circuit Judge except the Judge who draws, empanels and presides over the Grand Jury.

Section 2.—That all laws and parts of laws in conflict herewith be and the same as hereby repealed insofar as they affect the provisions of this act.

Section 3.—If any part of this act is declared invalid, or unconstitutional, it shall not affect any other part thereof.

Section 4.—This act shall take effect immediately upon its pass-

insured relied upon a law preventing rate increases; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. In the event that a law preventing increases on automobile insurance policy premium rates effective July 1, 1970, should be found to be invalid, no insurance policy in effect on July 1, 1970, or renewed in reliance of such law, shall be declared cancelled or invalid. Provided, however, that the policy holder shall be required to remit, within 30 days after receiving written notice from the insurer of an increase in rates, the difference between the rate on July 1, 1970, and the rate set by the insurer. Such notice shall not be effective unless sent to the insured after a law preventing the increase of rates is declared invalid.

Section 2. This act shall take effect immediately upon becoming law.

Approved by the Governor October 23, 1970.

Filed in Office Secretary of State October 23, 1970.

CHAPTER 70-1000

Senate Bill No. 1478

AN ACT relating to grand jury commissions; in all counties having a population in excess of four hundred fifty thousand (450,000), amending sections 1 and 2 of chapter 57-550, Laws of Florida, 1957; providing that the grand jury commission be composed of the circuit judges of the judicial circuit encompassing the geographical area of the county; providing for a chairman and secretary; providing all laws and parts of laws in conflict herewith be repealed; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1 of Chapter 57-550, Laws of Florida, 1957, is amended to read:

Section 1. The provisions of this act shall apply and relate to all counties in the State of Florida having a population of four

hundred fifty thousand (450,000) or more, according to the last previous federal census.

Section 2. Section 2 of Chapter 57-550, Laws of Florida, 1957, is amended to read:

Section 2. There is hereby created a grand jury commission composed of the circuit judges of the judicial circuit encompassing the geographical boundaries of all counties referred to in section 1 of this act. The chairman of the grand jury commission shall be elected by its members and the clerk of the circuit court shall be the secretary of the grand jury commission.

Section 3. All laws and parts of laws in conflict herewith are repealed.

Section 4. This act shall take effect September 1, 1970.

Vetoed by the Governor July 5, 1970.

Passed the Senate and House over the Veto October 9, 1970.

Filed in Office Secretary of State October 13, 1970.

CHAPTER 70-1001

Senate Bill No. 1507

AN ACT relating to Citrus County, hospital and medical nursing and convalescent home act; amending sections 3, 5 and 16 of chapter 65-1371, Laws of Florida, by increasing the maximum interest rate for all debts and obligations of the hospital board; increasing the number of banks which are authorized to act as depositories for hospital funds; providing for senate approval and confirmation for the appointment of trustees; providing for ambulance service; authorizing the charging of interest on patients' accounts, discounting and collecting accounts and debt obligations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act shall be known and may be cited as the first amendment to the Citrus County hospital and medical nursing and convalescent home act, chapter 65-1371, Laws of Florida.

(i) Failure to follow any of the procedures in this Rule shall not render a plea void absent a showing of prejudice.

Adopted Feb. 10, 1977, effective July 1, 1977 (343 So.2d 1247).

Committee Note

1977 Adoption. New in Florida. In view of Supreme Court's emphasis on the importance of this procedure as set forth in Williams v. State, 316 So.2d 267 (Fla.1975), Committee felt it appropriate to expand the language of former Rule 3.170(j) (deleted) and establish a separate rule. Incorporates Federal Rule 11(e), and allows for pleas of convenience as provided in North Carolina v. Alford, 91 S.Ct. 160, 400 U.S. 25, 27 L.Ed.2d 162 (1970).

(a), (b) Mandatory record of voluntariness and factual predicate is proper responsibility of counsel as well as the court.

(c) This waiver of right to appeal is a change from the proposed amendments to the Rules of Criminal Procedure now pending. A sentence if lawful is not subject to appellate review; a judgment, however, is. The Committee was of the opinion that the proposed rule should be expanded to include a waiver of appeal from the judgment as well as the sentence. Waivers of appeal have been approved. State v. Gilmore, 68 N.J. 499, 349 A.2d 769 (1975); United States Ex Rel. Amuso v. LaVallee, 291 F.Supp. 383, aff'd 427 F.2d 328 (1970); Tingle v. Williams, 36 N.Y.2d 829, 370 N.Y.S.2d 904, 331 N.E.2d 684 (N.Y.Ct.App.1975).

(d) Requires the court to explain the plea agreement to the defendant including conditions subsequent such as conditions of probation.

(e) Provides a readily available record (either oral or by use of standard forms) in all cases where a felony is charged.

(h) Rewording of Rule 11(h)(6) of the Federal Rules of Criminal Procedure.

Rule 3.180. Presence of Defendant

(a) Presence of Defendant. In all prosecutions for crime the defendant shall be present:

(1) At first appearance;

(2) When a plea is made, unless a written plea of not guilty shall be made in writing under the provisions of Rule 3.170(a);

(3) At any pre-trial conference, unless waived by Defendant in writing;

(4) At the beginning of the trial during the examination, challenging, impanelling, and swearing of the jury;

(5) At all proceedings before the court when the jury is present;

(6) When evidence is addressed to the court out of the presence of the jury for the purpose of laying the foundation for the introduction of evidence before the jury;

(7) At any view by the jury;

(8) At the rendition of the verdict;

(9) At the pronouncement of judgment and the imposition of sentence.

(b) Defendant Absenting Himself. If the defendant is present at the beginning of the trial and shall thereafter, during the progress of said trial or before the verdict of the jury shall have been returned into court, voluntarily absent himself from the presence of the court without leave of court, or is removed from the presence of the court because of his disruptive conduct during the trial, the trial of the cause or the return of the verdict of the jury in the case shall not thereby be postponed or delayed, but the trial, the submission of said case to the jury for verdict, and the return of the verdict thereon shall proceed in all respects as though the defendant were present in court at all times.

(c) Defendant May Be Tried in Absentia for Misdemeanors. Persons prosecuted for misdemeanors may, at their own request, by leave of court, be excused from attendance at any or all of the proceedings aforesaid.

(d) Presence of Corporation. A corporation may appear by counsel at all times and for all purposes.

Committee Note

Same as prior Rule except (3) added to conform to Rule 3.220(k); other sections renumbered.

V. PRE-TRIAL MOTIONS AND DEFENSES

Rule 3.190. Pre-Trial Motions

(a) Pre-Trial Motions in General. Every pre-trial motion and pleading in response to a motion shall be in writing and signed by the party making the motion or the attorney for the party. This requirement may be waived by the court for good cause shown. Each such motion or other pleading shall state the ground or grounds on which it is based. A copy shall be served on the adverse party's attorney before the time the original is filed. A certificate of service must accompany the filing of any such pleading.

(b) Motion to Dismiss.

Grounds. All defenses available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the indictment or information whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense.

(c) Time for Moving to Dismiss. Unless the court grants him further time, the defendant shall move to dismiss the indictment or information either before or upon arraignment. The court in its discretion may permit the defendant to plead and there-

after to file a motion to dismiss at a time to be set by the court. Except for objections based upon fundamental grounds, every ground for motion to dismiss which is not presented by a motion to dismiss within the time hereinabove provided for shall be taken to have been waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

(1) The defendant is charged with an offense for which he has been pardoned; or

(2) The defendant is charged with an offense of which he has previously been placed in jeopardy; or

(3) The defendant is charged with an offense for which he has previously been granted immunity; or

(4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant. The facts on which such motion is based should be specifically alleged and the motion sworn to.

(d) Traverse or Demurrer. The State may traverse or demur to a motion to dismiss which alleges factual matters. Factual matters alleged in a motion to dismiss shall be deemed admitted unless specifically denied by the State in such traverse. The court may receive evidence on any issue of fact necessary to the decision on the motion. A motion to dismiss under (c)(4) of this rule shall be denied if the State files a traverse which with specificity denies under oath the material fact or facts alleged in the motion to dismiss. Such demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

(e) Effect of Sustaining a Motion to Dismiss. If the motion to dismiss is sustained the court may order that the defendant be held in custody or admitted to bail for a reasonable specified time pending the filing of a new indictment or information. If a new indictment or information is not filed within the time specified in the order, or within such additional time as the court may allow for good cause shown, the defendant, if in custody, shall be discharged therefrom, unless some other charge justifies a continuation in custody. If he has been released on bail he and his sureties shall be exonerated; if money or bonds have been deposited as bail such money or bonds shall be refunded.

(f) Order Dismissing. For the purpose of construing Section 924.07(1), Florida Statutes (1969), the statutory term "order quashing" shall be taken and held to mean "order dismissing."

(g) Motion for Continuance.

(1) *Definition.* A continuance within the meaning of this rule is the postponement of a cause for any period of time.

(2) *Cause.* The court on motion of the State or a defendant or upon its own motion may in its discretion for good cause shown grant a continuance.

(3) *Time for Filing.* A motion for continuance may be made only before or at the time the case is set for trial, unless good cause for failure to so apply is shown or unless the ground for the motion arose after the cause was set for trial.

(4) *Certificate of Good Faith.* A motion for continuance shall be accompanied by a certificate of the movant's counsel that the motion is made in good faith.

(5) *Affidavits.* The party applying for a continuance may file affidavits in support of his motion, and the adverse party may file counter-affidavits in opposition to the motion.

(h) Motion to Suppress Evidence in Unlawful Search.

(1) *Grounds.* A defendant aggrieved by an unlawful search and seizure may move to suppress anything so obtained for use as evidence because:

(1) The property was illegally seized without a warrant, or

(2) The warrant is insufficient on its face, or

(3) The property seized is not that described in the warrant, or

(4) There was no probable cause for believing the existence of the grounds on which the warrant was issued, or

(5) The warrant was illegally executed.

(2) *Contents of Motion.* Every motion to suppress evidence shall clearly state the particular evidence sought to be suppressed, the reasons for suppression and a general statement of the facts on which the motion is based.

(3) *Hearing.* Before hearing evidence, the court shall determine if the motion is legally sufficient. If it is not, the motion shall be denied. If the court hears the motion on its merits, the defendant shall present evidence supporting his position and the State may offer rebuttal evidence.

(4) *Time for Filing.* The motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court may entertain the motion or an appropriate objection at the trial.

(i) Motion to Suppress a Confession or Admissions Illegally Obtained.

(1) *Grounds.* Upon motion of the defendant or upon its own motion, the court shall suppress any confession or admission obtained illegally from the defendant.

(2) *Time for Filing.* The motion to suppress shall be made prior to trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion or an appropriate objection at the trial.

(3) *Hearing.* The court shall receive evidence on any issue of fact necessary to be decided in order to rule on the motion.

(j) Motion to Take Deposition to Perpetuate Testimony.

(1) After an indictment or information upon which a defendant is to be tried is filed, the defendant or the State may apply for an order to perpetuate testimony. The application shall be verified or supported by the affidavits of credible persons that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition to prevent a failure of justice. The court shall order a commission to be issued to take the deposition of the witnesses to be used in the trial and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If the application is made within ten days before the trial date, the court may deny the application.

(2) If the defendant or the State desires to perpetuate the testimony of a witness living in or out of the State whose testimony is material and necessary to the case, the same proceedings shall be followed as provided in the preceding subdivision, but the testimony of the witness may be taken before an official court reporter, transcribed by him and filed in the trial court.

(3) If the deposition is taken on the application of the State, the defendant and his attorney shall be given reasonable notice of the time and place set for the deposition. The officer having custody of the defendant shall be notified of the time and place and shall produce the defendant at the examination and keep him in the presence of the witness during the examination. A defendant not in custody may be present at the examination, but his failure to appear after notice and tender of expenses shall constitute a waiver of the right to be present. The State shall pay to the defendant's attorney and to a defendant not in custody the expenses of travel and subsistence for attendance at the examination. The State shall make available to the defendant for his examination and use at the deposition any statement of the witness being deposed that is in the possession of the State and that the State would be required to make available to the defendant if the witness were testifying at trial.

(4) The application and order to issue the commission may be made either in term time or in vacation. The commission shall be issued at a time to be fixed by the court.

(5) Except as otherwise provided, the rules governing the taking and filing of oral depositions, the objections thereto, the issuing, execution and return of the commission and the opening of the depositions in civil actions shall apply in criminal cases.

(6) No deposition shall be used or read in the evidence when the attendance of the witnesses can be procured. If it shall appear to the court that any person whose deposition has been taken has absented himself by procurement, inducement or threats of any person on behalf of the State or of the defendant or of any person on his behalf, the depositions shall not be read in evidence on behalf of the defendant.

Amended Feb. 10, 1977, effective July 1, 1977 (343 So.2d 1247).

Repeal

Laws 1979, c. 79-69, § 3, provides for the repeal of Rule 3.190(j) "insofar as it is inconsistent with the provisions of this act." Section 4 of the law provides: "This act shall take effect upon becoming a law, except that section 3 shall take effect only if passed by a two-thirds vote of the membership of each house of the legislature." The law was passed with the requisite majority vote. The other provisions of the law will be designated as F.S.1979 § 918.17 which permits video-taping of testimony of certain minors in cases involving sexual battery or child abuse.

Committee Note

1972 Revision. Subdivision (h) is amended to require the defendant to specify the factual basis behind the grounds for a motion to suppress evidence. Subdivision (i) is amended to permit the State to take depositions under the same conditions that the defendant can take them. Former sections (j) and (k) transferred to Rules 3.150, 3.151 and 3.152. Sections (l) and (m) renumbered (j) and (k) respectively. Otherwise, same as prior rule.

1977 Amendment. This amendment removes any ambiguity in the rule as to whether the State must file a general or a specific traverse to defeat a motion to dismiss filed under the authority of Rule 3.190(c)(4).

See State v. Kemp, 305 So.2d 833 (Fla.3d DCA 1974).

The amendment clearly now requires a specific traverse to specific material fact or facts.

Rule 3.191. Speedy Trial

(a)(1). Speedy Trial Without Demand. Except as otherwise provided by this Rule, and subject to the limitations imposed under (b)(1) and (b)(2), every person charged with a crime by indictment or information shall without demand be brought to trial within 90 days if the crime charged be a misdemeanor, or within 180 days if the crime charged be a felony, and if not brought to trial within such time shall upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney be forever discharged from the crime; provided, the court before granting such motion, shall make the required inquiry under (d)(3). The time periods established by this section shall commence when such person is taken into custody as defined under (a)(4). A person charged with a crime is entitled to the benefits of this Rule whether such person is in custody in a jail or correctional institution of this

APR 28 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-6606

MARVIN FRANCOIS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, motion is hereby made that the petitioner be allowed to proceed in forma pauperis for the reasons stated in the attached affidavit. The petitioner has been previously adjudicated indigent for costs and fees in the court of the State of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128, this 27th day of April, 1982.

Respectfully submitted

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
Of Florida
1351 N.W. 12th Street
Miami, Florida 33125

BY: Rory S. Stein
RORY S. STEIN
Assistant Public Defender

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Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Marvin Francois, being first duly sworn, depose and say that I am the petitioner, in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made below relating to my ability to pay the cost of prosecuting the cause are true.

I am not presently employed and have not been employed for four years preceding the execution of this affidavit.

I have not, within the past twelve months, received any income from a business, profession or other form of self-employment, or in the form of rent payments, interest dividends, or other sources. I do not own any cash or checking or savings account.

I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Marvin Francois
MARVIN FRANCOIS

Duly witnessed and sworn to before me, a Notary Public, this 8 day of April, 1982.

Notary Public

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 11, 1983